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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1923

02/25/2014 Authored by Newton

The bill was read for the first time and referred to the Committee on Education Finance

1.1 A bill for an act  
 1.2 relating to education finance; repealing nonpublic pupil aid programs including  
 1.3 nonpublic pupil transportation aid; nonpublic pupil aid for textbooks, counseling,  
 1.4 and health services; nonpublic pupil aid for telecommunications and Internet  
 1.5 access services; limiting nonpublic pupil participation in the postsecondary  
 1.6 enrollment options program; limiting special education services to nonpublic  
 1.7 pupils to the services and funding required by federal law; amending Minnesota  
 1.8 Statutes 2012, section 125A.18; repealing Minnesota Statutes 2012, sections  
 1.9 123B.40; 123B.41; 123B.42; 123B.43; 123B.44; 123B.45; 123B.46; 123B.47;  
 1.10 123B.48; 123B.84; 123B.85; 123B.86; 123B.87; 123B.92, subdivision 9;  
 1.11 124D.09, subdivisions 4, 17; 125B.26, subdivision 5.

1.12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.13 Section 1. Minnesota Statutes 2012, section 125A.18, is amended to read:

1.14 **125A.18 SPECIAL INSTRUCTION; NONPUBLIC SCHOOLS.**

1.15 (a) A resident school district's responsibility for providing federally mandated  
 1.16 special education services to a qualifying nonpublic pupil does not exceed the services  
 1.17 required by federal law. A resident school district may choose to provide services beyond  
 1.18 those required by federal law.

1.19 (b) Consistent with paragraph (a) and federal mandates, no resident of a district who  
 1.20 is eligible for special instruction and services under this section may be denied instruction  
 1.21 and service on a shared time basis consistent with section 126C.19, subdivision 4, because  
 1.22 of attending a nonpublic school defined in section 123B.41, subdivision 9. If a resident  
 1.23 pupil with a disability attends a nonpublic school located within the district of residence,  
 1.24 the district must provide necessary transportation for that pupil within the district between  
 1.25 the nonpublic school and the educational facility where special instruction and services are  
 1.26 provided on a shared time basis. If a resident pupil with a disability attends a nonpublic  
 1.27 school located in another district and if no agreement exists under section 126C.19,

2.1 subdivision 1 or 2, for providing special instruction and services on a shared time basis to  
2.2 that pupil by the district of attendance and where the special instruction and services are  
2.3 provided within the district of residence, the district of residence must provide necessary  
2.4 transportation for that pupil between the boundary of the district of residence and the  
2.5 educational facility. The district of residence may provide necessary transportation for that  
2.6 pupil between its boundary and the nonpublic school attended, but the nonpublic school  
2.7 must pay the cost of transportation provided outside the district boundary. Parties serving  
2.8 students on a shared time basis have access to the due process hearing system described  
2.9 under United States Code, title 20, and the complaint system under Code of Federal  
2.10 Regulations, title 34, section 300.660-662. ~~In the event it is determined under these~~  
2.11 ~~systems that the nonpublic school or staff impeded the public school district's provision of~~  
2.12 ~~a free appropriate education, the commissioner may withhold public funds available to the~~  
2.13 ~~nonpublic school proportionally applicable to that student under section 123B.42.~~

2.14 **EFFECTIVE DATE.** This section is effective July 1, 2013.

2.15 Sec. 2. **REPEALER.**

2.16 Minnesota Statutes 2012, sections 123B.40; 123B.41; 123B.42; 123B.43; 123B.44;  
2.17 123B.45; 123B.46; 123B.47; 123B.48; 123B.84; 123B.85; 123B.86; 123B.87; 123B.92,  
2.18 subdivision 9; 124D.09, subdivisions 4 and 17; and 125B.26, subdivision 5, are repealed.

2.19 **EFFECTIVE DATE.** This section is effective July 1, 2013.

### **123B.40 DECLARATION OF POLICY.**

It is the intent of the legislature to provide for distribution of educational aids such as textbooks, standardized tests and pupil support services so that every school pupil in the state will share equitably in education benefits and therefore further assure all Minnesota pupils and their parents freedom of choice in education.

### **123B.41 DEFINITIONS.**

Subdivision 1. **Application.** As used in sections 123B.40 to 123B.48, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. **Textbook.** (a) "Textbook" means any book or book substitute, including electronic books as well as other printed materials delivered electronically, which a pupil uses as a text or text substitute in a particular class or program in the school regularly attended and a copy of which is expected to be available for the individual use of each pupil in this class or program.

(b) For purposes of calculating the annual nonpublic pupil aid entitlement for textbooks, the term shall be limited to books, workbooks, or manuals, whether bound or in loose-leaf form, as well as electronic books and other printed materials delivered electronically, intended for use as a principal source of study material for a given class or a group of students.

(c) For purposes of sections 123B.40 to 123B.48, the terms "textbook" and "software or other educational technology" include only such secular, neutral, and nonideological materials as are available, used by, or of benefit to Minnesota public school pupils.

Subd. 3. **Standardized tests.** "Standardized tests" means standardized tests and scoring services which are provided by commercial publishing organizations or the state and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.

Subd. 4. **Pupil support services.** "Pupil support services" means guidance and counseling services and health services.

Subd. 5. **Individualized instructional or cooperative learning materials.** "Individualized instructional or cooperative learning materials" means educational materials which:

(a) are designed primarily for individual pupil use or use by pupils in a cooperative learning group in a particular class or program in the school the pupil regularly attends;

(b) are secular, neutral, nonideological and not capable of diversion for religious use; and

(c) are available, used by, or of benefit to Minnesota public school pupils.

Subject to the requirements in clauses (a), (b), and (c), "individualized instructional or cooperative learning materials" include, but are not limited to, the following if they do not fall within the definition of "textbook" in subdivision 2: published materials; periodicals; documents; pamphlets; photographs; reproductions; pictorial or graphic works; prerecorded video programs; prerecorded tapes, cassettes and other sound recordings; manipulative materials; desk charts; games; study prints and pictures; desk maps; models; learning kits; blocks or cubes; flash cards; individualized multimedia systems; prepared instructional computer software programs; choral and band sheet music; electronic books and other printed materials delivered electronically; and CD-Rom.

"Individualized instructional or cooperative learning materials" do not include instructional equipment, instructional hardware, or ordinary daily consumable classroom supplies.

Subd. 5a. **Software or other educational technology.** For purposes of sections 123B.42 and 123B.43, "software or other educational technology" includes software, programs, applications, hardware, and any other electronic educational technology.

Subd. 6. **Pupils.** "Pupils" means elementary and secondary pupils.

Subd. 7. **Elementary pupils.** "Elementary pupils" means pupils in grades kindergarten through 6; provided, each kindergarten pupil in a half-day program shall be counted as one-half pupil for all computations pursuant to sections 123B.40 to 123B.42, and 123B.44 to 123B.48.

Subd. 8. **Secondary pupils.** "Secondary pupils" means pupils in grades 7 through 12.

Subd. 9. **Nonpublic school defined.** "Nonpublic school" means any school, church or religious organization, or home school wherein a resident of Minnesota may legally fulfill the compulsory instruction requirements of section 120A.22, which is located within the state, and which meets the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352). It does not mean a public school.

Subd. 10. **Nonsectarian nonpublic school.** "Nonsectarian nonpublic school" means any nonpublic school as defined in subdivision 9, which is not church related, is not controlled by a church, and does not promote a religious belief.

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Subd. 11. **Pupil; student.** "Pupil" or "student" means a child enrolled in a school and is limited to children who are residents, or children of residents, of Minnesota.

Subd. 12. **Intermediary service area.** "Intermediary service area" means a school administrative unit approved by the commissioner, other than a single school district, including but not limited to the following:

- (a) a service cooperative;
- (b) a cooperative of two or more school districts;
- (c) learning centers; or
- (d) an association of schools or school districts.

Subd. 13. **Neutral site.** "Neutral site" means a public center, a nonsectarian nonpublic school, a mobile unit located off the nonpublic school premises, or any other location off the nonpublic school premises which is neither physically nor educationally identified with the functions of the nonpublic school.

Subd. 14. **Guidance and counseling services.** "Guidance and counseling services" means all activities of a licensed counselor in counseling pupils and parents, providing counseling on learning problems, evaluating the abilities of pupils, assisting pupils in personal and social development and providing referral assistance.

Subd. 15. **Health services.** "Health services" means physician, dental, nursing or optometric services and health supplies brought to the site by the health professional for pupil usage in the field of physical or mental health; provided the term does not include direct educational instruction, services which are required pursuant to sections 125A.03 to 125A.24, and 125A.65, and 125A.26 to 125A.48, or services which are eligible to receive special education aid pursuant to section 125A.75.

### **123B.42 TEXTBOOKS; INDIVIDUAL INSTRUCTION OR COOPERATIVE LEARNING MATERIAL; STANDARD TESTS.**

Subdivision 1. **Providing education materials and tests.** The commissioner of education shall promulgate rules under the provisions of chapter 14 requiring that in each school year, based upon formal requests by or on behalf of nonpublic school pupils in a nonpublic school, the local districts or intermediary service areas must purchase or otherwise acquire textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests and loan or provide them for use by children enrolled in that nonpublic school. These textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests must be loaned or provided free to the children for the school year for which requested. The loan or provision of the textbooks, individualized instructional or cooperative learning materials, and standardized tests shall be subject to rules prescribed by the commissioner of education.

Subd. 1a. **Curriculum; electronic components.** A school district that provides curriculum to resident students that has both physical and electronic components must make the electronic component accessible to a resident student in a home school in compliance with sections 120A.22 and 120A.24 at the request of the student or the student's parent or guardian, provided that the district does not incur more than an incidental cost as a result of providing access electronically.

Subd. 2. **Title to education materials and tests.** The title to textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized testing materials must remain in the servicing school district or intermediary service area, and possession or custody may be granted or charged to administrators of the nonpublic school attended by the nonpublic school pupil or pupils to whom the textbooks, individualized instructional or cooperative learning materials, or standardized tests are loaned or provided.

Subd. 3. **Cost; limitation.** (a) The cost per pupil of the textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests provided for in this section for each school year must not exceed the statewide average expenditure per pupil, adjusted pursuant to clause (b), by the Minnesota public elementary and secondary schools for textbooks, individualized instructional materials and standardized tests as computed and established by the department by February 1 of the preceding school year from the most recent public school year data then available.

(b) The cost computed in clause (a) shall be increased by an inflation adjustment equal to the percent of increase in the formula allowance, pursuant to section 126C.10, subdivision 2, from the second preceding school year to the current school year. Notwithstanding the amount of the formula allowance for fiscal years 2015 and 2016 in section 126C.10, subdivision 2, the commissioner shall use the amount of the formula allowance for the current year minus \$414 in determining the inflation adjustment for fiscal years 2015 and 2016.

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(c) The commissioner shall allot to the districts or intermediary service areas the total cost for each school year of providing or loaning the textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests for the pupils in each nonpublic school. The allotment shall not exceed the product of the statewide average expenditure per pupil, according to clause (a), adjusted pursuant to clause (b), multiplied by the number of nonpublic school pupils who make requests pursuant to this section and who are enrolled as of September 15 of the current school year.

#### **123B.43 USE OF INDIVIDUALIZED INSTRUCTIONAL MATERIALS.**

(a) The commissioner shall assure that textbooks and individualized instructional materials loaned to nonpublic school pupils are secular, neutral, nonideological and that they are incapable of diversion for religious use.

(b) Textbooks, individualized instructional materials, software or other educational technology must not be used in religious courses, devotional exercises, religious training or any other religious activity.

(c) Textbooks and individualized instructional materials must be loaned only to individual pupils upon the request of a parent or guardian or the pupil on a form designated for this use by the commissioner. The request forms shall provide for verification by the parent or guardian or pupil that the requested textbooks and individualized instructional materials are for the use of the individual pupil in connection with a program of instruction in the pupil's elementary or secondary school.

(d) The servicing school district or the intermediary service area must take adequate measures to ensure an accurate and periodic inventory of all textbooks, individualized instructional materials, software or other educational technology loaned to elementary and secondary school pupils attending nonpublic schools. The commissioner of education shall promulgate rules under the provisions of chapter 14 to terminate the eligibility of any nonpublic school pupil if the commissioner determines, after notice and opportunity for hearing, that the textbooks, individualized instructional materials, or software or other educational technology, have been used in a manner contrary to the provisions of section 123B.41, subdivision 5, 123B.42, or this section or any rules promulgated by the commissioner of education.

(e) Nothing contained in section 123B.41, subdivision 5, 123B.42, or this section shall be construed to authorize the making of any payments to a nonpublic school or its faculty, staff or administrators for religious worship or instruction or for any other purpose.

#### **123B.44 PROVISION OF PUPIL SUPPORT SERVICES.**

Subdivision 1. **Provided services.** The commissioner of education shall promulgate rules under the provisions of chapter 14 requiring each district or other intermediary service area: (a) to provide each year upon formal request by a specific date by or on behalf of a nonpublic school pupil enrolled in a nonpublic school located in that district or area, the same specific health services as are provided for public school pupils by the district where the nonpublic school is located; and (b) to provide each year upon formal request by a specific date by or on behalf of a nonpublic school secondary pupil enrolled in a nonpublic school located in that district or area, the same specific guidance and counseling services as are provided for public school secondary pupils by the district where the nonpublic school is located. The district where the nonpublic school is located must provide the necessary transportation within the district boundaries between the nonpublic school and a public school or neutral site for nonpublic school pupils who are provided pupil support services under this section if the district elects to provide pupil support services at a site other than the nonpublic school. Each request for pupil support services must set forth the guidance and counseling or health services requested by or on behalf of all eligible nonpublic school pupils enrolled in a given nonpublic school. No district or intermediary service area must not expend an amount for these pupil support services which exceeds the amount allotted to it under this section.

Subd. 2. **Location of services.** Health and guidance and counseling services may be provided to nonpublic school pupils under this section at a public school, a neutral site, the nonpublic school or any other suitable location. District or intermediary service area personnel and representatives of the nonpublic school pupils receiving pupil support services must hold an annual consultation regarding the type of services, provider of services, and the location of the provision of these services. The district board or intermediary service area governing board must make the final decision on the location of the provision of these services.

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Subd. 3. **Guidance and counseling; exclusions.** Guidance and counseling services provided to nonpublic school pupils pursuant to this section shall not include the planning or selection of particular courses or classroom activities of the nonpublic school.

Subd. 4. **Health services; allotment.** Each school year the commissioner shall allot to the school districts or other intermediary service areas for the provision of health services pursuant to this section the actual cost of the services provided for the pupils in each respective nonpublic school for that school year. The allotment must not exceed the average expenditure per public school pupil for these services by those Minnesota public elementary and secondary schools which provide health services to public school pupils, multiplied by the number of pupils in that particular nonpublic school who request these health services and who are enrolled as of September 15 of the current school year.

Subd. 5. **Guidance and counseling services; allotment.** Each school year the commissioner shall allot to the school districts or intermediary service areas for the provision of guidance and counseling services pursuant to this section the actual cost of the services provided for the pupils in each respective nonpublic school for that school year. The allotment for guidance and counseling services for the secondary pupils in each nonpublic school must not exceed the average expenditure per public school secondary pupil for these services by those Minnesota public schools which provide these services to their secondary pupils, multiplied by the number of secondary pupils in that particular nonpublic school who request these services and who are enrolled as of September 15 of the current school year.

Subd. 6. **Computation of maximum allotments.** For purposes of computing maximum allotments for each school year pursuant to this section, the average public school expenditure per pupil for health services and the average public school expenditure per secondary pupil for guidance and counseling services shall be computed and established by the department by February 1 of the preceding school year from the most recent public school year data then available.

### **123B.45 PAYMENTS FOR CONTRACTUAL OBLIGATIONS.**

The commissioner shall make such payments to school districts or intermediary service areas pursuant to sections 123B.40 to 123B.42, and 123B.44 to 123B.48 as are needed to meet contractual obligations incurred for the provision of benefits to nonpublic school students pursuant to section 123B.42, 123B.44, or 123B.445.

### **123B.46 ADMINISTRATIVE COSTS.**

Each year, a district or intermediary service area may claim and receive from the department an additional sum for the administration of sections 123B.42, 123B.44, and 123B.445, equal to five percent of the district's or area's allocation for that year pursuant to those sections.

### **123B.47 NOTICE TO DISTRICTS; PRORATION.**

If the appropriation for nonpublic educational aid under sections 123B.40 to 123B.48 is not sufficient to meet the required payments in any fiscal year, the department must notify the school districts at the earliest possible date of the need to prorate the appropriation among the districts.

### **123B.48 LIMIT ON DISTRICT OBLIGATIONS.**

If the amount appropriated for purposes of sections 123B.40 to 123B.42, and 123B.44 to 123B.48, for any year is not sufficient to make the payments required pursuant to sections 123B.40 to 123B.42, and 123B.44 to 123B.48, for that year, then no school district or intermediary service area is required to expend an amount pursuant to sections 123B.40 to 123B.42, and 123B.44 to 123B.48, for that year which exceeds the amount of the payments it receives pursuant to sections 123B.40 to 123B.42, and 123B.44 to 123B.48, for that year.

### **123B.84 POLICY.**

In districts where the state provides aids for transportation it is in the public interest to provide equality of treatment in transporting school children of the state who are required to attend elementary and secondary schools pursuant to chapter 120A, so that the health, welfare and safety of the children, while using the public highways of the state, shall be protected.

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School children attending any schools, complying with section 120A.22, are therefore entitled to the same rights and privileges relating to transportation.

#### **123B.85 DEFINITIONS.**

Subdivision 1. **Application.** The following words and terms in sections 121A.585, 121A.59, 123B.84 to 123B.87, 123B.90, and 123B.91, shall have the following meanings ascribed to them.

Subd. 2. **District.** "District" means any school district as defined in section 120A.05.

Subd. 3. **School.** "School" means any school as defined in section 120A.22, subdivision 4.

Subd. 4. **School board.** "School board" means the governing body of any school district.

Subd. 5. **School children.** "School children" means any student or child attending or required to attend any school as provided in the Education Code, chapters 120A to 129C.

#### **123B.86 EQUAL TREATMENT.**

Subdivision 1. **General provisions.** A district shall provide equal transportation within the district for all school children to any school when transportation is deemed necessary by the school board because of distance or traffic condition in like manner and form as provided in sections 123B.88 and 123B.92, when applicable.

Subd. 2. **Nonpublic school students.** (a) The board of any local district must provide school bus transportation to the district boundary for school children residing in the district at least the same distance from a nonpublic school actually attended in another district as public school pupils are transported in the transporting district. Such transportation must be provided whether or not there is another nonpublic school within the transporting district, if the transportation is to schools maintaining grades or departments not maintained in the district or if the attendance of such children at school can more safely, economically, or conveniently be provided for by such means.

(b) The school board of any local district may provide school bus transportation to a nonpublic school in another district for school children residing in the district and attending that school, whether or not there is another nonpublic school within the transporting district, if the transportation is to schools maintaining grades or departments not maintained in the district or if the attendance of such children at school can more safely, economically, or conveniently be provided for by such means. If the board transports children to a nonpublic school located in another district, the nonpublic school must pay the cost of such transportation provided outside the district boundaries.

Subd. 3. **Board control.** When transportation is provided, the scheduling of routes, manner and method of transportation, control and discipline of school children and any other matter relating thereto shall be within the sole discretion, control and management of the board.

Subd. 4. **Rules.** The commissioner of education may amend rules relating to equal transportation.

#### **123B.87 FUNDS AND AIDS.**

Subdivision 1. **State aid.** State aids made available or appropriated shall be for the equal benefit of all school children, and be disbursed in such manner as determined by the board.

Subd. 2. **Boards may expend money.** The board of any district may expend any moneys in its treasury, whether received from state or any other source for the purpose of providing equal transportation treatment of all school children attending school.

#### **123B.92 TRANSPORTATION AID ENTITLEMENT.**

Subd. 9. **Nonpublic pupil transportation aid.** (a) A district's nonpublic pupil transportation aid for the 1996-1997 and later school years for transportation services for nonpublic school pupils according to sections 123B.88, 123B.84 to 123B.86, and this section, equals the sum of the amounts computed in paragraphs (b) and (c). This aid does not limit the obligation to transport pupils under sections 123B.84 to 123B.87.

(b) For regular and excess transportation according to subdivision 1, paragraph (b), clauses (1) and (2), an amount equal to the product of:

(1) the district's actual expenditure per pupil transported in the regular and excess transportation categories during the second preceding school year; times

(2) the number of nonpublic school pupils residing in the district who receive regular or excess transportation service or reimbursement for the current school year; times

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(3) the ratio of the formula allowance pursuant to section 126C.10, subdivision 2, for the current school year to the formula allowance pursuant to section 126C.10, subdivision 2, for the second preceding school year.

(c) For nonpublic nonregular transportation according to subdivision 1, paragraph (b), clause (5), an amount equal to the product of:

(1) the district's actual expenditure for nonpublic nonregular transportation during the second preceding school year; times

(2) the ratio of the formula allowance pursuant to section 126C.10, subdivision 2, for the current school year to the formula allowance pursuant to section 126C.10, subdivision 2, for the second preceding school year.

(d) Notwithstanding the amount of the formula allowance for fiscal years 2015 and 2016 in section 126C.10, subdivision 2, the commissioner shall use the amount of the formula allowance for the current year minus \$414 in determining the nonpublic pupil transportation revenue in paragraphs (b) and (c) for fiscal years 2015 and 2016.

#### **124D.09 POSTSECONDARY ENROLLMENT OPTIONS ACT.**

Subd. 4. **Alternative pupil.** "Alternative pupil" means an 11th or 12th grade student not enrolled in a public school district, and includes students attending nonpublic schools and students who are home schooled. An alternative pupil is considered a pupil for purposes of this section only. An alternative pupil must register with the commissioner of education before participating in the postsecondary enrollment options program. The commissioner shall prescribe the form and manner of the registration, in consultation with the Nonpublic Education Council under section 123B.445, and may request any necessary information from the alternative pupil.

Subd. 17. **Alternative pupils financial arrangements.** For an alternative pupil enrolled in a course or program under this section, the Department of Education shall make payments to the eligible institution according to subdivision 13. The department shall not make any payments to a school district for alternative pupils.

#### **125B.26 TELECOMMUNICATIONS/INTERNET ACCESS EQUITY AID.**

Subd. 5. **Telecommunications/Internet access services for nonpublic schools.** (a) Districts shall provide each year upon formal request by or on behalf of a nonpublic school, not including home schools, located in that district or area, ongoing or recurring telecommunications access services to the nonpublic school either through existing district providers or through separate providers.

(b) The amount of district aid for telecommunications access services for each nonpublic school under this subdivision equals the lesser of:

(1) 90 percent of the nonpublic school's approved cost for the previous fiscal year according to subdivision 1 exceeding \$10 for fiscal year 2006 and later times the number of weighted pupils enrolled at the nonpublic school as of October 1 of the previous school year; or

(2) the product of the district's aid per pupil unit according to subdivision 4 times the number of weighted pupils enrolled at the nonpublic school as of October 1 of the previous school year.

(c) For purposes of this subdivision, nonpublic school pupils shall be weighted by grade level using the weighting factors defined in section 126C.05, subdivision 1.

(d) Each year, a district providing services under paragraph (a) may claim up to five percent of the aid determined in paragraph (b) for costs of administering this subdivision. No district may expend an amount for these telecommunications access services which exceeds the amount allocated under this subdivision. The nonpublic school is responsible for the Internet access costs not covered by this section.

(e) At the request of a nonpublic school, districts may allocate the amount determined in paragraph (b) directly to the nonpublic school to pay for or offset the nonpublic school's costs for telecommunications access services; however, the amount allocated directly to the nonpublic school may not exceed the actual amount of the school's ongoing or recurring telecommunications access costs.